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Item 17 of the provisional agenda

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 December 1994]

Status of the International Covenants on Human Rights

1. States parties to international treaties sometimes make reservations when ratifying those multilateral instruments. The number of reservations attached to human rights treaties is among the highest. The United Nations Human Rights Committee has criticized reservations of a general nature (or declarations or understandings that, however constituted, may have the same effect as a reservation) that effectively nullify any Covenant right that might have required amending national law to ensure compliance. The Committee, in its General Comment No. 24 (52), expressed concern about such reservations and their equivalents, stating that they "essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations". In such circumstances, the Committee notes, no real international rights or obligations have thus been accepted (CCPR/C/21/Rev.1/Add.6, para. 12).

2. Human Rights Watch shares this view. We are also concerned that the proliferation of "reservations", "declarations" and "understandings" weakens human rights treaties and threatens the effectiveness of the international human rights law. In the view of Human Rights Watch, the United States is particularly guilty of this practice in its ratification of the International Covenant on Civil and Political Rights (ICCPR). We are particularly concerned that the United States Government has rendered its ratification of the ICCPR a cosmetic gesture by declaring that the treaty should not be considered to be self-executing and announcing that implementing legislation is unnecessary because the United States Government is supposedly in full compliance with the treaty's obligations (other than those for which specific reservations, declarations and understandings were entered).

Introduction

3. The United States Government has used three devices to deny Americans the protection of international human rights law as a supplement to existing domestic constitutional and statutory rights guarantees:

(a) First, through a series of reservations, declarations and understandings proposed by the Bush Administration and accepted by the United States Senate, it carved out every provision of the treaty that might have granted expanded rights to Americans. Most disturbingly, it reserved the right to continue to execute persons for crimes they committed when under 18 years of age;

(b) Second, it effectively pronounced the United States in full compliance with the remaining treaty provisions, and declared that the provisions of articles 1 through 27 are not "self-executing";

(c) Third, it announced that no implementing legislation was necessary.

These actions deny Americans the right to rely on the treaty in United States courts, a right they would have had if the United States Government had either declared the Covenant to be self-executing or enacted implementing legislation to create causes of action under the treaty. The result is a gesture for external consumption rather than an act that has any meaning for Americans.

Death penalty reservation

4. Human Rights Watch believes that the reservations, declarations and understandings attached to the Covenant by the United States - with the exception of its reservation to article 20, which seeks to preserve a more expansive interpretation of freedom of speech than provided by the Covenant - are either unnecessary, because they are intended simply to signify that United States law and practice already conform to or should be interpreted as conforming with the provisions of the ICCPR, or inconsistent with the purpose of the Covenant. The United States reservation on juvenile executions falls into the latter category.

5. Article 19 (3) of the Vienna Convention on the Law of Treaties stipulates that reservations must be compatible with the object and purpose of a treaty. As the Human Rights Committee has observed, "reservations that offend

peremptory norms would not be compatible with the object and purpose of the Covenant" (ibid., para. 8). The Committee goes on to cite as examples a State's reservation of the right to "execute pregnant women or children". The United States has taken this proscribed step in its reservation to article 6, section 5, with respect to the execution of children.

6. We note that the United States Government's restrictions on the applicability of the Covenant have occasioned considerable objection from other States. Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain and Sweden have objected to the United States reservation on the execution of juveniles. This is by far the largest number of objections registered to any nation's reservation - indeed, of 15 nations that have registered objections, 11 of them find the United States reservation on the death penalty as applied to anyone incompatible with the object and purpose of the Covenant.

Declaration that the Covenant is not self-executing

7. To ensure that remedies exist for violations of the rights guaranteed by the Covenant, Human Rights Watch believes the United States Government is obliged to grant Americans the right to invoke the protections of the treaty in United States courts. The United States Government should adopt the position that human rights provisions contained in multilateral instruments are, in principle, self-executing. The only exception should be those provisions that by their nature are not immediately operational, such as an article in which a State party pledges to create a fund for victims of torture. In the alternative, the United States Government should enact specific legislation enabling people in the United States to invoke the ICCPR in United States courts. Human Rights Watch would prefer a formal declaration that the treaty is self-executing, and thus invocable in United States courts without further legislation. We have also called on the Clinton Administration to repeal all restrictive reservations, declarations and understandings and thus to break with the Bush Administration's determination not to allow international human rights law to add to rights enjoyed in the United States.

8. The declaration by the Bush Administration that the International Covenant on Civil and Political Rights is not self-executing, and the accompanying refusal to enact legislation to implement the provisions of the Covenant - continued under President Clinton - makes ratification of the International Covenant on Civil and Political Rights an empty act for Americans. The endorsement of the most important treaty for the protection of civil rights yielded not a single enforceable right in addition to those in the United States.

9. Human Rights Watch strongly disputes the view that Americans do not need the protection of the ICCPR. As we have shown in a separate detailed report, the Bush and Clinton Administrations have been wrong in their assessment that the United States already complies with all the treaty's obligations, even after the nullification of some of the rights through restrictive

reservations, declarations and understandings. 1/ In the areas of racial and gender discrimination, prison conditions, immigrants' rights, language discrimination, the death penalty, police brutality, freedom of expression and religious freedom, the United States is now violating the treaty in important respects. As a result, the Clinton Administration remains under an immediate legal obligation to remedy these human rights violations, and to provide Americans the ability to ensure enforcement by resort to United States courts.

Recommendations

10. Because of the role that restrictive reservations, declarations and understandings play in weakening international human rights law, Human Rights Watch calls upon the Commission on Human Rights to adopt a statement deploring the extensive recourse to these measures and urging their withdrawal. It also asks the Commission to urge States parties to each treaty to reject those reservations, declarations and understandings that are incompatible with the object and purpose of the instrument, including those that have the effect of denying victims of rights violations any recourse to rely on the treaty in domestic courts.

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1/ **Human Rights Violations in the United States, Human Rights Watch and the American Civil Liberties Union, January 1994.**

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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 December 1994]

Minority rights in the Federal Republic of Yugoslavia

Statement of the problem

1. With international attention focused on the war in Bosnia and Herzegovina, the Government of the Federal Republic of Yugoslavia (FRY) - particularly the regime of Serbian President Slobodan Milosevic - has increased repression of civil and political rights in its own country. Repression against Albanians in the province of Kosovo in southern Serbia and Muslims in the Sandzak region that straddles Serbia and Montenegro has been most severe.

2. Since the late 1980s, systematic human rights abuses have been taking place in the province of Kosovo, where Albanians comprise approximately 90 per cent of the population. The autonomy enjoyed by Kosovo during Tito's reign was revoked by the Serbian Government and the predominantly Albanian provincial Government was dissolved in 1989 and 1990. Kosovo was placed under

Belgrade's direct rule in 1990, and the civil and political rights of Albanians have been systematically repressed since then. Serbian authorities justify their action by pointing out that Albanians in Kosovo refuse to recognize the Serbian government's authority in Kosovo.

3. Since the war in Bosnia and Herzegovina began in April 1992, Muslims in the Sandzak region of the FRY have been brutalized by the police, arrested and tried for political reasons and some have disappeared.

Relevant international law

4. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) provides that members of ethnic minorities shall have a right "to enjoy their own culture" and "use their own language". Police brutality and abuse in detention violate articles 6 and 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such abuses also contravene the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the United Nations Standard Minimum Rules for the Treatment of Prisoners. Arbitrary arrests contradict article 9 of the ICCPR. Restrictions on freedom of expression and the press violate article 19 of the ICCPR and restrictions on freedom of association violate articles 21 and 22 of the ICCPR. Unwarranted raids on and searches of houses violate article 17 of the ICCPR, which states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home ...". The denial of a fair trial and other due process guarantees violates articles 9 and 14 of the ICCPR.

Human Rights Watch/Helsinki's experience and findings

5. Human Rights Watch/Helsinki has been monitoring human rights abuses in the former Socialist Federal Republic of Yugoslavia (SFRY) since the early 1980s and within Serbia and Montenegro following the break-up of the former SFRY. We have had a constant presence in the FRY since 1991 and have collected scores of testimonies from victims of, and eyewitnesses to, human rights abuses in Kosovo, Sandzak, Vojvodina, Montenegro and Serbia proper. Indeed, Human Rights Watch/Helsinki has been the only international human rights group functioning within the FRY since mid-1993 following the expulsion of a human rights monitoring mission of the Conference on Security and Cooperation in Europe (CSCE), denial of requests by the Commission's Special Rapporteur on the former Yugoslavia to establish an office in or conduct a mission to the FRY, and denial of visas to Amnesty International to visit Kosovo. Since 1991, we have published reports and issued letters documenting and protesting police repression against peaceful demonstrators, restrictions on freedom of expression, association and the press, violations of due process during trials of alleged "war criminals", police brutality and discrimination against Albanians in Kosovo, political trials of Muslims in Sandzak, paramilitary violence against Hungarians, Croats and other non-Serbs in Vojvodina, and refoulement of Bosnian refugees.

6. Although paramilitary violence against non-Serbs in Vojvodina - primarily Hungarians and Croats - has decreased in recent months, systematic abuses of human rights continue without respite in Kosovo. Police raids on Albanian

homes and marketplaces have been marked by brutality and excessive use of force. Albanians have been arbitrarily arrested, interrogated and subjected to torture and cruel, inhuman and degrading treatment in detention. Their political trials are marked by violations of the rights of the accused, including denial of the right to counsel and denial of the right to a fair and open public hearing by a competent, independent tribunal without unreasonable delay. In recent weeks, Serbian authorities have arrested at least 150 Albanians who had been dismissed from the Serbian police force and have been accused of forming a paramilitary Albanian police force. Many of those arrested have been beaten and tortured. At least one victim died as a result of police beatings and another victim was sent to the intensive care unit of the Pristina hospital because of severe injuries sustained while in detention. In the first 10 months of 1994, thousands of Albanians were summoned for "informative talks" with the police and many were beaten during their interrogation, over a dozen Albanians were killed, and over 200 remain in custody for political reasons.

7. Police in Sandzak have used the same tactics as their counterparts in Kosovo: raids on homes, arrests, and beating as part of ostensible searches for illegal weapons. Serbian authorities have clamped down on the predominantly Muslim Party of Democratic Action (SDA), arresting dozens of its activists. Some of those arrested were taken to Bosnian Serb-held territory in Bosnia and Herzegovina, where they were tortured until they signed "confessions" stating they had planned an armed rebellion. For weeks, even though some had serious wounds from the beatings, the authorities refused to grant them access to either defence counsel or medical treatment. By October 1994, the defendants had been tried, found guilty and sentenced to prison terms ranging from one to six years. Since 1992, Muslim leaders in Serbia have been silenced while other Muslims have been displaced and thousands have fled the country. Through these repressive and coercive practices, the Yugoslav authorities have effectively crushed the Sandzak Muslims' participation and future voice in Yugoslav politics.

Recommendations

8. Human Rights Watch/Helsinki calls on the United Nations Commission on Human Rights to:

(a) Press Member States and international negotiators to encourage the FRY to improve its respect for the civil and political rights of non-Serbs within Serbia, particularly Albanians in Kosovo and Muslims in Sandzak;

(b) Press Member States and international negotiators to consider the Serbian Government's abusive human rights record within the FRY before United Nations sanctions against that State are further eased or lifted;

(c) Press Member States to encourage the Government of the FRY to allow international human rights observers to enter and travel without impediment throughout the country.